IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 52 OF 2003

State
through Police Inspector,
Anjuna Police Station,
Bardez-Goa. ... Appellant

versus

Ceasar Rodrigues,
son of Alberto Rodrigues,
H.No.108, Borchabhat,
Caranzalem, Panaji-Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. S. G. Bhobe, Advocate for the Respondent.

CORAM : P. V. HARDAS, J.

DATE : 5TH FEBRUARY, 2004.

ORAL JUDGMENT

This Appeal by the State assails the Judgment of the learned Judicial Magistrate First Class 'F' Court, Mapusa, dated 31st January, 2003, in Criminal Case No.210/2000/F, acquitting the Accused for offences punishable under Sections 279, 337, 338 and 304 of the Indian Penal Code.

2. The Respondent/Accused came to be prosecuted for the aforesaid offences on the allegations which are spelt out from the evidence of P.W.1, Vishvanath Agarvadekar, who states that he, on the date of the accident was driving a Maruti van bearing registration No. GA-01-V-3728. As the Maruti van reached near Nagoa junction, he proceeded further after glancing on the left and the right sides to ensure that there was no traffic. Suddenly, a tempo dashed against the Maruti van on the left side. The inmates of the Maruti van due to the impact were thrown out of the car. Two persons who remained in the car sustained injuries while two other persons who were thrown out of the car along with P.W.1, Vishvanath Agarvadekar, succumbed to their injuries.

3. In view of the submission of Mr. S. N. Sardessai, learned Public Prosecutor appearing for the Appellant, it is not necessary for me to advert to the other evidence led by the prosecution.

4. Mr. S. N. Sardessai, learned Public Prosecutor appearing for the Appellant has urged that the learned Judicial Magistrate First Class 'F' Court, Mapusa, while acquitting the Respondent/Accused has given no reasons whatsoever. According to him, the learned Judicial Magistrate First Class 'F' Court,

Mapusa, gave reasons in paragraph 6 of the Judgment. The said paragraph refers only to what the witnesses have stated and what has been argued before the Court by the learned Counsel for the Accused. Towards the close of the said paragraph, these are all the reasons that have been given by the Court which are reproduced hereunder:-

> "The witnesses examined are the inmates of the Maruti van. No independent witnesses are examined. From the deposition of the witnesses that has come on record, I feel that benefit of doubt goes in favour of the accused. Hence, I pass the following:-

5. An appellate Court, in order to test whether the reasons advanced by the Court below for acquitting the Accused are sustainable is guided principally by the reasons and the findings recorded by the Court. The Judgment in the criminal trial should consist not merely of reproduction of the evidence of the witnesses but should also reflect the marshalling of the evidence and the appreciation of the evidence. A Trial Magistrate should appreciate the evidence of each witnesses and then record its conclusion. The entire prosecution case cannot be brushed aside in this cursory manner by holding that the witnesses examined were interesting witnesses. In order to extend benefit

of doubt to the Accused, there has to be appreciation of evidence and the learned Trial Magistrate should in the Judgment endeavour to point out as to why the benefit of doubt is being extended. Acquittal of the Accused by merely stating that the Accused is being given the benefit of doubt does not subserve the interest of justice. The expression benefit of doubt is not to be used as magic incantation, the recitation of which suffice the recording of acquittal. The Judgment of the Trial Magistrate should show the reasons for giving the benefit of doubt to the Accused. After all, benefit of doubt is not a fanciful reasoning but is a doubt which a reasoning or rude man entertains regarding the existence or non existence of a particular fact.

6. In the light of what I have held above, according to me, this Judgment is extremely cryptic and unsustainable and deserves to be quashed and set aside. The matter is remitted back to the learned Judicial Magistrate First Class 'F' Court, Mapusa, who shall, after hearing the learned Counsel representing the prosecution and the Accused afresh and on the basis of the evidence, already recorded, decide the criminal case on merits.

7. The parties to appear before the learned Trial Magistrate on 1st March, 2004, at 2.30 p.m.

8. Criminal Appeal No. 52 of 2003 is allowed accordingly.

P. V. HARDAS, J.

RD.